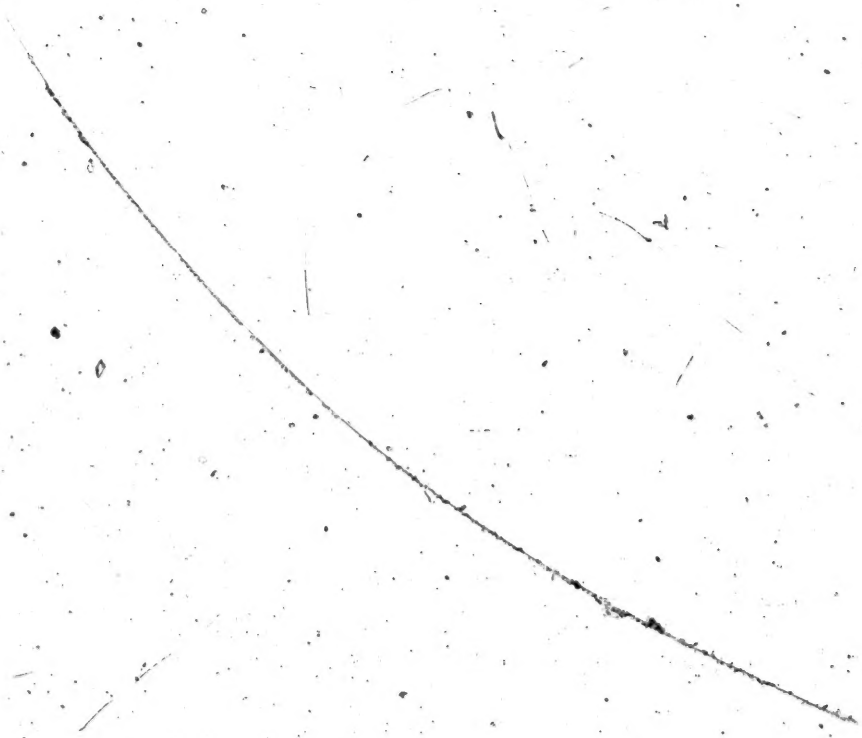

LIBRARY
SUPREME COURT, U. S.

FILED
JAN 11 1972
E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

TERM, 1971

No. 70-5064

RUTH J. JEFFERSON, *et al.*,
Appellants,

v.

BURTON G. HACKNEY, *et al.*,
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

SUPPLEMENTAL BRIEF FOR APPELLANTS

EDWARD V. SPARER
University of Pennsylvania
School of Law
3400 Chestnut Street
Philadelphia, Pennsylvania 19104

CARL RACHLIN
Hunter College
New York, New York

STEVEN J. COLE
HENRY A. FREEDMAN
Center on Social Welfare
Policy and Law
401 West 117th Street
New York, New York 10027

ED J. POLK
800 Main Street
Dallas, Texas 75202

IN THE

Supreme Court of the United States

TERM, 1971

No. 70-5064

RUTH J. JEFFERSON, *et al.*,
Appellants,

v.

BURTON G. HACKNEY, *et al.*,
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

SUPPLEMENTAL BRIEF FOR APPELLANTS

Appellants submit this supplemental brief pursuant to Rule 41(5) in order to apprise the Court of three recent developments which bear upon the questions presented by this appeal. The first is a recent opinion[1] of the Supreme Court of California (the highest court in that state) which involves the statutory issue raised herein under § 402(a)(23);

[1] *Villa v. Hall*, No. SAC 7907, was decided on December 6, 1971, but received by counsel too late for citation in appellants' main brief. We have lodged with the clerk nine copies of that opinion, and have served it upon appellees and the *amicus* in this case.

the second is this Court's decision in *Townsend v. Swank*, No. 70-5021, decided December 20, 1971 (one week after appellants' main brief was filed) which is directly related to that issue; the third is the filing of a supplemental brief *amicus curiae* by the United States in *Whitfield v. King*[2] which addresses the same questions which appellants here raise in their Equal Protection and Civil Rights Act claim.

I. VILLA v. HALL

Villa involved a challenge to California's method of determining eligiblity for, and the amount of, financial assistance under the AFDC program. After updating its standard of need and payment maximums as required by § 402(a)(23), California sought to change its eligibility and grant determination method by subtracting outside income from the revised maximum, rather than from the standard of need as had been its prior practice. The result would have been to deny AFDC payments to thousands of families who were "needy" under California's revised standard of need, but whose income exceeded the maximum payment level. The California Supreme Court unanimously (7-0) held that such a grant computation and eligibility determination method violated sections 402(a)(7), (a)(8) and (a)(23) of the Social Security Act, 42 U.S.C. §§ 602(a)(7), (8), (23). In so doing that court explicitly held that this Court's interpretation of § 402(a)(23) in *Rosado v. Wyman* (namely that that section was intended to increase AFDC eligibility by virtue of the cost-of-living increase to the standard of need), and this Court's definition of a "ratable reduction" in *Rosado*, 397 U.S. at 409, n. 13 (namely that income must be deducted *prior* to application of the percentage reduction), were both *necessary* to the decision in *Rosado* and were *not* dicta as suggested by the Solicitor General.

---

[2]Civil Action No. 3330-N, M.D. Ala., filed on December 27, 1971. We have lodged with the clerk nine copies of that brief, and have served it upon appellees and the *amicus* in this case. The copies we have filed have been retyped verbatim since the copy with which we were provided was unsuitable for reproduction.

Extended analysis of *Villa* in this supplemental brief is unnecessary since the opinion clearly sets forth the basis for the court's conclusion. We note, however, that the California court's reasoning parallels appellants' argument in Point II, sections A and B(2) of our main brief and is identical to the rationale of the three judge court in *Alvarado v. Schmidt*, 317 F. Supp. 1027 (W.D. Wisc. 1970), discussed at pp. 86-87 of appellants' main brief.[3]

II. TOWNSEND v. SWANK

Appellants argued in their main brief, pp. 117 to 124 that if § 402(a)(23) were not read to require the revised standard of need to be used to determine AFDC eligibility, then that section would be in conflict with § 402(a)(10). We urged that § 402(a)(10) as construed in *Dandridge v. Williams*, and *King v. Smith* required that *some* aid be given *all* families eligible under the *federal* criteria set forth in § 406 of the Social Security Act.[4] The Court's decision in *Townsend* confirms our interpretation of § 402(a)(10) and places that section in conflict with HEW's interpretation of § 402(a)(23).

---

[3]While the *Villa* court suggests that there are some differences between maximums and percentage reductions, its holding as to the effect of § 402(a)(23) as interpreted in *Rosado* clearly applies to *both* methods. See, e.g., Slip op. at 13. The California Court may well have been reluctant to purport to decide a question not specifically before it under California's statute which it knew was pending before this Court for decision. Further, the *Villa* court's suggestion at p. 10 that § 402(a)(23) *alone* may not have compelled its conclusion may reflect the fact that § 402(a)(23) was not pleaded in *Villa*, and that California's revised maximum may have been *greater* than its previous standard of need. If that were true, § 402(a)(23) would have been satisfied since eligibility would have been increased sufficiently. In Texas, however, the eligibility level is 75% of the standard of need, and the standard of need is at the minimum level required by the § 402(a)(23) updating. Thus in Texas, § 402(a)(23) alone would compel the result appellants request.

[4]Appellants also argued that *Engelman v. Amos*, 92 S.Ct. 181 (1971), and the United States' position as *amicus* in that case, compelled this reading of the Act.

In *Townsend* the Court held that:

> "*King v. Smith* establishes that, at least in the absence of congressional authorization for the exclusion clearly evidenced from the Social Security Act or its legislative history, a state eligibility standard that excludes persons eligible for assistance under federal AFDC standards violates the Social Security Act and is therefore invalid under the Supremacy Clause." Slip op. at 4.

Section 406 defines a "dependent child" as one who is needy (under state standards), is age-qualified and has an absent parent. Plaintiff Davila, and the approximately 2,500 other families denied aid by Texas despite income below the standard of need, thus stand in the same position as did appellants in *Townsend*. Although they are needy and meet the other characteristics of dependency in § 406, and thus are eligible under the federal test of § 406, they have been denied AFDC payments by application of a state eligibility test more narrow than § 406.[5] HEW's interpretation of the term "eligible" in § 402(a)(10), namely that it refers to only eligibility under *state* criteria, was rejected in *Townsend*, and thus as HEW candidly conceded, under such an interpretation of § 402(a)(10) appellants herein must prevail. See *Amicus* at p. 9.

III. WHITFIELD v. KING *AMICUS*

Although this Court invited the Solicitor General to file a brief in this case expressing the views of the United States, he has done so only with regard to the question presented under § 402(a)(23) of the Social Security Act. The Memorandum for the United States filed in June, 1971 noted that to the extent appellants' equal protection claim rests on

[5] While the state has latitude in setting its standard of need, once it sets that standard all families otherwise eligible who meet the state test of financial need are within the purview of § 406, since they are "needy," and must be provided some aid under § 402(a)(10). That clearly was the holding in *Dandridge*.

factual considerations with regard to the alleged racially discriminatory purpose or effect of the Texas payment policies, "they are best left to the parties for argument."[6] However, pursuant to the district court's specific request in *Whitfield v. King*, that the United States discuss the constitutional challenge to Alabama's program (35% of need paid to AFDC recipients, as opposed to 58% in APTD, and 100% in AB and OAA), the United States Attorney has recently filed a brief which considers the question.

We note that the *Whitfield amicus*, while not taking an ultimate position as to how the percentage disparity question should be resolved, does confirm appellants' view of the common purpose of the various Social Security Act titles:

> "Departmental regulations have long recognized that the common underlying purpose of all the programs is to provide subsistence level support for qualified persons, and that 'the basic requirements of all people are the same regardless of which program serves them.' Department of HEW. Simplified Methods for Determining Needs (1966)."[7]

Moreover, the federal government's *amicus* also supports appellants' position that a state's determination to set AFDC payments at a lower percentage of the standard of need than OAA payments is totally unrelated to the needs of the respective recipients, but is essentially a fiscal device:

> "While different standards of need could administratively be determined appropriate based on a finding that members of some categories typically incur higher-than-average living costs (e.g., a blind person may need a seeing eye dog and a part-time reader), the percentage reductions in payment levels challenged by plaintiffs are not based upon such an analysis. While they may or may not have subsidiary purposes, such cutbacks are essentially fiscal measures unrelated to the determined needs of welfare recipients."[8]

---

[6] *Amicus*, p. 12.

[7] *Whitfield amicus*, p. 12.

[8] *Whitfield amicus*, pp. 14-15.

CONCLUSION

The recent developments since the filing of appellants' main brief reinforce appellants' request for a reversal of the judgment below.

Respectfully submitted,

STEVEN J. COLE
HENRY A. FREEDMAN
Center on Social Welfare
Policy and Law
401 West 117th Street
New York, N.Y. 10027

ED J. POLK
800 Main Street
Dallas, Texas 75202

EDWARD V. SPARER
University of Pennsylvania
School of Law
3400 Chestnut Street
Philadelphia, Penn. 19104

CARL RACHLIN
Hunter College
New York, New York